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10/528,036

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/528,036
Filing Date: December 02, 2005
Appellant(s): ANDREIKO, CRAIG A.

Thomas Humphrey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 14, 2010 appealing from the Office action mailed April 12, 2010.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 26-28 and 45-51.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,315,553	SACHDEVA ET AL.	11-2001
5,991,728	DEBUSK ET AL.	11-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-28 and 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sachdeva et al. (6,315,553) in view of DeBusk et al. (5,991,728).

Sachdeva teaches a method of providing a custom orthodontic appliance for treatment of a patient, the method comprising receiving information from an orthodontic practitioner for providing a custom orthodontic appliance for a patient in response to the information from the orthodontic practitioner (col. 10, ll. 45-52), maintaining a database, accessible by a computer, storing in the database information identifying information relating to treatment plan options including information about prescriptions (col. 5, ll. 46-67), determining parameters for the configuration of a custom orthodontic appliance for

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the patient and providing to the orthodontic practitioner an orthodontic appliance design for the patient having a configuration that includes the determined parameters (col. 4, II. 18-39). Sachdeva does not teach the method comprising maintaining a database containing data related to each of a plurality of practitioners and information identifying the practitioners and information relating to treatment plan options including default preferences as to orthodontic associated with the respective practitioners.

DeBusk teaches the method comprising maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options including default preferences associated with the respective practitioners (col. 15, II. 1-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the database of Sachdeva with the database containing a plurality of practitioners taught by DeBusk as a matter of obvious design choice to reduce the number of databases needed in a practice containing multiple practitioners.

Sachdeva teaches the method further comprising receiving information from the orthodontic practitioner of a treatment plan option for treatment of the patient and determining at least one of the parameter based at least in part on the information of the treatment plan option received from the orthodontic practitioner (col. 15, II. 34-37), the method further comprising receiving information from the orthodontic practitioner of a treatment plan option for treatment of the patient and determining parameter addressed by the information of the treatment plan option received from the orthodontic practitioner

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in accordance with that information and determining parameters not so addressed in accordance with information stored in the database (col. 10, II. 26-24) and the method further comprising providing to the orthodontic practitioner the orthodontic appliance manufactured in accordance with the orthodontic appliance design (col. 4, II. 31-39).

As to claim 46, Sachdeva teaches a method of providing a custom orthodontic appliance for treatment of a patient, the method comprising in response to information from an orthodontic practitioner (col. 10, II. 27-34), providing an orthodontic appliance for an individual patient having a configuration that includes appliance parameters base at least in part on predetermined treatment plan options including information about prescriptions associated with the practitioner (col. 5, II. 46-67, col. 10, II. 45-52).

Sachdeva does not teach the treatment retrieved from a previously created and maintained database containing database containing data associating a plurality of orthodontic practitioners with treatment plan options including default preferences as to one or both of orthodontic prescriptions and orthodontic appliance hardware respectfully preferred by each practitioner.

DeBusk teaches the method comprising maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options including default preferences associated with the respective practitioners (col. 15, II. 1-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the database of Sachdeva with the database containing a plurality of practitioners taught by DeBusk as a matter of obvious design

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choice to reduce the number of databases needed in a practice containing multiple practitioners.

Regarding claim 47, Sachdeva teaches a method of providing a custom orthodontic appliance to an orthodontic practitioner for treatment of an individual patient, the method comprising in response to a request from an orthodontic practitioner to a custom orthodontic appliance for orthodontic treatment of an individual patient, providing to the orthodontic practitioner a custom orthodontic appliance for orthodontic treatment of the individual patient design in part based on patient-specific information associated with the request and in part based on default information of treatment preference associated with the requesting orthodontic practitioner and retrieved from a database containing previously stored default information data including information about prescriptions (col. 4, ll. 18-39, col. 5, ll. 46-67, col. 10, ll. 45-52). Sachdeva does not teach the database containing previously stored default information data associating each of a plurality of orthodontic practitioners with treatment preferences, including default preference as to one or both of orthodontic prescriptions and orthodontic appliances, to be applied unless otherwise instructed by a requesting orthodontic practitioner.

DeBusk teaches the method comprising maintaining a database accessible by computer and containing data related to each of a plurality of practitioners, storing in the database, information identifying the practitioners and information relating to treatment plan options including default preferences associated with the respective practitioners (col. 15, ll. 1-30). It would have been obvious to one having ordinary skill in the art at

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the time of the invention to modify the database of Sachdeva with the database containing a plurality of practitioners taught by DeBusk as a matter of obvious design choice to reduce the number of databases needed in a practice containing multiple practitioners.

Sachdeva further teaches the method further comprising designing and manufacturing the custom orthodontic appliance for the individual patient based on the patient specific information and the default information (col. 5, ll. 46-67, col. 7, ll. 9-12, 23-27), the method further comprising designing the custom orthodontic appliance based in part on patient information relating to the individual patient that had been previously stored in a patient-information database containing patient information relating to a plurality of individual patients (col. 5, ll. 45-67) and the method wherein the patient information relating to the plurality of individual patients includes information relating to patient anatomy (col. 5, ll. 46-50).

Sachdeva does not teach the method further comprising creating a database including the default information of treatment preferences from each of the plurality of orthodontic practitioners.

DeBusk teaches the method further comprising collecting, for storage in the database, the default information of treatment preferences from each of the plurality of practitioners (col. 9, ll. 13-19, col. 10, ll. 30-58). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the database of Sachdeva with the database containing a plurality of practitioners taught by DeBusk as

a matter of obvious design choice to reduce the number of databases needed in a practice containing multiple practitioners.

(10) Response to Argument

Appellant argues that Sachdeva does not teach storing in the database information relating to treatment plan options including default preferences as to orthodontic prescriptions, however, while it is noted that the secondary reference of DeBusk is used to teach this limitation as discussed in detail in the above rejection, Sachdeva does teach storing treatment plans of previous treated patients in a database, which would be default preferences with respect to the patient's condition. Appellant further argues that Sachdeva does not teaches the default preference are retrieved from the database, however, Sachdeva teaches attempting to match a needed treatment for a new patient with similar treatment of a previous patient that is stored in the database, therefore, Sachdeva does teach retrieving the default preferences with respect to the patient's condition from the database. It is further noted that Sachdeva teaches incorporating the stored treatment plan, into a new treatment plan if a match is not found (col. 10, ll. 45-52), therefore meeting the limitation of receiving information from an orthodontic practitioner and in response to the information determining parameter for the orthodontic appliance base at least in part on the stored treatment plan. Regarding the limitations directed towards the database containing information, including default preferences for a plurality of practitioners, the appellant argues that the tools used for a surgical procedure taught by DeBusk are not the same as the treatment plan for the patient of the appliance of the patient. While it is noted that the database of DeBusk

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does not teach storing treatment plans related to orthodontics, the primary reference of Sachdeva teaches the database for storing treatment plans related to orthodontics as discussed above in detail. DeBusk, however, does teach, storing treatment plans in a database related to a medical procedure and the information stored includes information identifying a plurality of practitioners and default preferences. As discussed in detail above, it would have been obvious to one having ordinary skill in the art the time of the invention to modify the database taught by Sachdeva, with the database containing a plurality of practitioners and there default preferences regarding specific treatment plans in order to reduce the amount of databases needed in a multi-practice office.

Furthermore it is noted, that the applicant is merely duplicating the database taught by Sachdeva, by adding multiple practitioners information to it and it has been to be of ordinary skill in the art to merely duplicate an essential working part of a device, therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to add multiple practitioners information to the database taught by Sachdeva (see *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), MPEP 2144.04 VI B). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Heidi M Eide/

Examiner, Art Unit 3732

Conferees:

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

/Eric Nicholson/
RQAS -3700